

Dr. Graham, Coroner	c/o Jefferson County	
FACT WITNESSES:		
Mary LaChance	9145-A Villa Ridge Ct. St. Louis, MO. 63123	
Andrew Crews	c/o Jefferson County	
Timothy Groat	c/o Jefferson County	
Mary Schroeter	5515 Echo Valley House Springs, MO. 63051	
Eric Burgard	c/o Jefferson County	
Jeffrey Sengheiser	c/o Jefferson County	
Terry Thomas	c/o Pevely Police Dept. P.O.Box 304 Pevely, MO. 63070	
Yvonne Wilson	Currently unknown	
Michael Gray	c/o Jefferson County	

3. Exhibits: Plaintiff may offer one or more of the following exhibits. All photographic evidence has been previously produced by Defendant. Some have been used in Plaintiff deposition, of which have been identified below in bold print.

Pl. Ex. No.	Description	Objection, if Any
1 (Group Exhibit)	Incident Photos	
1a	Incident Photograph (Plaintiff, deceased: autopsy: leg)	
1b	Incident Photograph (Plaintiff, deceased; autopsy full frontal)	
1c	Incident Photograph (Plaintiff, deceased; autopsy: bullet wound)	
1d	Incident Photograph (Plaintiff, deceased; autopsy: upper torso/head)	
1e	Incident Photograph (Plaintiff, deceased; autopsy : head/shoulder left side)	
1f	Incident Photograph (drawing/map of area/cars taken from aerial POV) Pl. Depo Ex. 10, 11/28/07	
1g	Incident Photograph (2 nd map of area/cars taken from aerial POV) Pl. Depo Ex. 12 11/28/07	
1h	Incident Photograph (Night time police scene)	
1i	Incident Photograph (Night time police scene w/smoke/haze)	

1j	Incident Photograph (Night time police scene, afar)	
1k	Incident Photograph (Night time police scene – automobile) Pl. Depo. Ex. 13 11/28/07	
1l	Incident Photograph (Night time police scene, destroyed car) Pl. Depo. Ex. 11 11/28/07	
1m	Incident Photograph (Night time police scene, general) Pl. Depo. Ex. 05 11/28/07	
1n	Incident Photograph (Day time police scene, misc. 1)	
1o	Incident Photograph (Day time police scene, misc. 2)	
1p	Incident Photograph (Day time police scene, misc.3)	
1q	Incident Photograph (Day time police scene, misc. 4)	
1r	Incident Photograph (Day time police scene, misc. 5)	
1s	Incident Photograph (shell casings 1)	
1t	Incident Photograph (shell casings 2)	
1u	Incident Photograph (shell casings 3)	
1v	Incident Photograph (shell casings 4)	
1w	Incident Photograph (shell casings 5)	
1x	Incident Photograph (shell casings 6)	
1y	Incident Photograph (shell casings 7)	
1z	Incident Photograph (shell casings 8)	
1aa	Incident Photograph (Plaintiff vehicle, rt. side) Pl. Depo. Ex. 01 11/28/07	
1bb	Incident Photograph (Plaintiff vehicle, front)	
1cc	Incident Photograph (Defendant's police cruiser, left front)	
1dd	Incident Photograph (Defendant's police cruiser, front) Pl. Depo. Ex. 03 11/28/07	
1ee	Incident Photograph (Defendant's bloodied shirt) Pl. Depo. Ex. 06 11/28/07	
1ff	Incident Photograph (Plaintiff vehicle, trajectory layout 1)	

1gg	Incident Photograph (plaintiff vehicle, trajectory layout 2)	
1hh	Incident Photograph (Plaintiff vehicle, trajectory , left side)	
1ii	Incident Photograph (Plaintiff vehicle, closeup chipped/grazed)	
1jj	Incident Photograph (Plaintiff vehicle, trajectory , front window)	
1kk	Incident Photograph (Plaintiff vehicle, trajectory , front hood)	
1ll	Incident Photograph (Plaintiff vehicle, trajectory , left side)	
1mm	Incident Photograph (Plaintiff vehicle, trajectory , front, angled)	
1nn	Incident Photograph (Plaintiff vehicle, trajectory, front, angled 2)	
1oo	Incident Photograph, (Plaintiff vehicle, trajectory rear left)	
1pp	Incident Photograph (Plaintiff vehicle, trajectory, left)	
1qq	Incident Photograph (Plaintiff vehicle, trajectory front)	
1rr	Incident Photograph (Plaintiff vehicle, trajectory left)	
1ss	Incident Photograph (Plaintiff vehicle, trajectory left)	
1tt	Incident Photograph (Plaintiff ball cap – side bullet entries)	
1uu	Incident Photograph (Plaintiff ball cap, top view)	
1vv	Incident Report(Pl.bloodied car door)	
2	Police Report (Evidence receipts)	
3	Police Report (Witness statements)	
4	Police Report (Supp. Det. Grey)	
5	Police Report (Supp. Cpl. Dunn 1)	
6	Police Report (Supp. Cpl. Dunn 2)	
7	Police Report (Event chronology)	
8	Police Report (Supp. Cpl. Dunn 3)	
9	IAD Interview	
10	Autopsy Report	
11	Toxicology Report	
12	Google map of the area	

4. Deposition and Interrogatory Answers:

Plaintiff reserves the right to use any portion of any deposition taken in the case at trial if needed for rebuttal, impeachment purposes, or if witnesses are unavailable for trial. Furthermore, Plaintiff intends to use at trial each answer to interrogatories made by each Defendant.

5. Trial Brief: See attached.

Respectfully Submitted this

11th day of January, 2011

/s/Celestine Dotson

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing, including the attached trial brief, was electronically filed with this court via the CM/ECF system, on the 11th day of January, 2011 and by way of such, will have been served electronically to the following:

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GARY BIRD (deceased), by and through)	
His Next Friend, GREG BIRD,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:07-CV-00202-SNLJ
)	
JEFFERSON COUNTY SHERIFF’S)	
DEPARTMENT, et al.,)	
)	
Defendants.)	

PLAINTIFF’S TRIAL BRIEF

Comes Now, Plaintiff, and in accordance with the Court’s Case Management Order, files its Trial Brief, as follows:

Rule of Law:

“Apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.” *Craighead v. Lee*, 399 F.3d 954, 961 (8th Cir. 2005) (quoting, *Tennessee v. Garner*, 471 U.S. 1 (1985)). “Notwithstanding probable cause to seize a suspect, an officer may not always do so by killing him.” *Id.* “The intrusiveness of a seizure by means of deadly force is unmatched.” *Id.* “Hence, ‘[w]here the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.’” *Id.* (alteration in original).

Since 2001, police officers in the Eighth Circuit have been on notice that “that they may not use deadly force under circumstances in which they should know that the suspect does not present an immediate threat of serious physical injury or harm.” *Id.* at 963 [12]-[15]. For

example, a jury may “[d]raw the not extraordinary inference[,] from uncontradicted testimony that an unarmed man was shot in the back of the head[,] ... that the shooting was unreasonable.” *Ribbey v. Cox*, 222 F.3d 1040, 1043 [1]-[4] (8th Cir. 2000).

Moreover, deadly force simply may not be used against a “misdemeanant.” *See, Helseth v. Burch*, 258 F.3d 867, 878-879 (Bye, Concurring) (8th Cir. 2001) (citing, *Garner*, 471 U.S. at 12) (noting a flat prohibition against the use of deadly force upon a fleeing misdemeanor).

Statement of Facts:

On March 19, 2005, deputy sheriff Groat shot Gary Bird, *inter alia*, in the back of the head after eluding attempts to curb Mr. Bird for unspecified misdemeanor traffic offenses. At the time of the fatal shot(s), Mr. Bird had fully cleared the vehicle operated by deputy Sheriff Crews, who was assisting Groat. Groat justified his original volley of shots because he perceived that Mr. Bird was driving toward Crews who was initially standing outside his vehicle. However, Crews clearly avoided any injury by moving to the passenger side of his vehicle. Moreover, Mr. Bird did not constitute an immediate threat of serious physical injury to anyone once Crews retreated to the passenger side of the vehicle. Mr. Bird was not armed with any weapons. Although Groat did not suspect Mr. Bird of any felonious activity, he decided to fire additional shots solely for the purpose of preventing Mr. Bird’s escape.

Based upon the shooting reconstruction by detective Gray, each of the shots striking Mr. Bird entered from the left rear and exited to the front right. In other words, any of the shots which constituted a “seizure” were fired after any perceived immediate threat to Crews had subsided. In light of Eighth Circuit caselaw, a jury may decide that the use of deadly force under these circumstances was unreasonable and impose liability upon deputy Groat.

Respectfully Submitted this
11th day of January, 2011

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